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IN THE

Supreme Court of the United States

October Term, 1977

No. 77-669

AMELIA ZAMORA DE MATEOS, Administratrix of the Estate of THEODORE REYES, Deceased,

Petitioner,

v.

TEXACO, INC.

and

TEXACO PANAMA, INC.,

Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT.

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AMELIA ZAMORA DE MATEOS, Administratrix of the Estate of THEODORE REYES, Deceased,
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v.

TEXACO, INC.

and

TEXACO PANAMA, INC.,
Respondent.

—

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT.

—

TO THE HONORABLE, THE CHIEF JUSTICE AND ASSOCIATE JUSTICES OF THE SUPREME COURT OF THE UNITED STATES:

Petitioner, AMELIA ZAMORA DE MATEOS, Administratrix of the Estate of THEODORE REYES, Deceased, prays that a Writ of Certiorari issue to review the judgment of the United States Court of Appeals for the Third Circuit, entered in the above case on August 12, 1977.

OPINIONS OF THE COURTS BELOW.

The opinion of the United States District Court for the Eastern District of Pennsylvania and Order of that Court is printed in Appendix hereto (A16 et seq.). The opinion of the United States Court of Appeals for the Third Circuit is printed in Appendix hereto (A1 et seq.) and has not yet been reported.

JURISDICTION.

The Order of the United States Court of Appeals for the Third Circuit was entered on August 12, 1977. The jurisdiction of this Court is invoked under 28 U. S. C. 1254(1).

QUESTION PRESENTED.

When the plaintiff's decedent is a seaman aboard a vessel bearing the Liberian flag and registry and owned by a Panamanian corporation in which the sole stockholder holding 100% interest is an American corporation and that American corporation is also the sole stockholder of other corporations utilized to manage and operate the fleet of vessels owned by the Panamanian corporation, is not the beneficial ownership of the American corporation such a substantial interest as to warrant the application of the Jones Act, 46 U. S. C. 688 et seq. and The Death on the High Seas Act 46 U. S. C. 761 et seq.

STATEMENT OF THE CASE.

Plaintiff, a native of the Republic of Panama, is the mother and administratrix of the estate of THEODORE REYES, deceased. Plaintiff brought a civil action in the United States District Court for the Eastern District of Pennsylvania on February 23, 1972 under the Jones Act, 46 U. S. C. 688 et seq., The Death on the High Seas Act, 46 U. S. C. 761 et seq. and the General Maritime Law. Plaintiff's decedent was a seaman serving aboard the SS TEXACO KENYA, a Liberian flag vessel owned by the defendant, TEXACO PANAMA, INC., a Panama corporation, hereinafter called Texpan. The cause of action arose by plaintiff's decedent's death on February 24, 1970, as a result inter alia of a failure to provide prompt and adequate medical treatment.

The procedural history of the case is set forth in notable detail in the Opinion and Order of the trial court and is found on pages A22-A23 of the Appendix. It resulted, as was pointed out in that Opinion of the court, in Texaco, Inc. being dropped without prejudice as a defendant and a stipulation that service had been made on Texpan with the same force and effect as if a vessel of Texpan had been legally attached in the Port of Philadelphia. The trial court invited the parties to submit the matter similar to a case stated, for determination of the issues of jurisdiction with the elements of the case stated consisting of the discovery heretofore completed and submissions of undisputed findings of fact submitted by counsel. The trial court heard no testimony, made no observation of the witnesses, and the case was determined entirely upon the written record.

In the lower court's statement of the pertinent and controlling facts, it was found that:

"Plaintiff's decedent, Theodore Reyes, was a citizen and a resident of the Republic of Panama. From approximately May, 1964 until his death on February 24, 1970, he was employed as a seaman by defendant Texpan. During the initial period of his employment, he served aboard the SS Texaco London; he was then transferred to the SS Texaco Kenya in July, 1969, and at the time of his death had attained the status of able-bodied seaman aboard that vessel. The Texaco Kenya is owned by defendant, a Panamanian corporation, purportedly with its principal place of business in Panama City; during the period relevant to this litigation, the vessel was registered in Liberia, and carried that nation's flag.

While aboard the Texaco Kenya, Reyes was employed pursuant to an employment contract executed with defendant in Panama in March, 1969. At the time he signed the employment contract, Reyes agreed to be bound by the "Conditions of Employment" which had been drafted by Texpan for the purpose of governing its relations with Panamanian seamen in its employ. Those conditions unequivocally provide for application of Panamanian law to disputes arising out of his status as an employee.

(footnotes omitted)

. . .

Texpan, incorporated under the laws of Panama, is a wholly-owned subsidiary of Texaco, Inc., a Delaware corporation, with its principal place of business in New York City."

(A18-A19)

In addition, the court also found that Texpan is a viable and separate corporate entity engaged in the dual

enterprise of (a) international shipping, and (2) marketing of petroleum products in the Republic of Panama (A20).

As to the circumstances surrounding the death of THEODORE REYES, the trial court, in its Opinion, sums up the facts:

"During the period prior to, and encompassing the illness and death of Reyes, the Texaco Kenya was engaged in short run voyages in the Caribbean. On February 18, 1970, the vessel was docked at Puerto Cortes, Honduras, and was scheduled to depart for Puerto Limon, Costa Rica on the following morning. Reyes was on shore leave on February 4th, and failed to appear for his scheduled watch that evening; while he did return before the vessel departed for Puerto Limon on February 19th, he did not arrive at his maneuvering post at the time of castoff, nor did he stand his appointed watch that morning. The cause of this breach of duty is in dispute; defendant claims that Reyes returned from shore leave too intoxicated to stand watch, while plaintiff alleges that Reyes was suffering the onset of his subsequently fatal illness.

Whatever the cause of Reyes' incapacity on February 18th and 19th, the record is clear that by February 20th, he had become ill. On that afternoon, he reported to the Master on the bridge that he was suffering from headaches and weakness in his legs; the Master ordered Reyes to return to his quarters. There was no medical officer on board the Texaco Kenya, but Reyes was visited in his cabin by the First Officer, and given aspirin tablets and vitamins. However, during the course of the four-day voyage to Puerto Limon, Reyes' condition continued to deteriorate; he gradually lost his ability to walk, and at some point on February 21st or 22nd, he was taken

to the ship's hospital in order to enable the ship's officer to monitor his condition on an ongoing basis. The vessel was not diverted from her scheduled route to Puerto Limon, nor was immediate medical assistance requested by radio; however, on February 22nd, the day before arrival in Puerto Limon, the Master of the vessel cabled ahead to request medical assistance immediately upon arrival at that destination.

Reyes was examined by a physician on board the Texaco Kenya while anchored in Puerto Limon harbor on the morning of February 23rd; as a result of that examination he was transferred immediately to a hospital, pursuant to the decision of the examining physician. At that juncture, plaintiff's decedent had totally lost the use of both of his legs, and was practically unconscious when taken ashore to Tony Facio Hospital. He died the following morning."

(A20-A21)

Following REYES' death, suit was instituted in the Third Labor Court of Panama by plaintiff in this action and the grandmother and sister of the decedent, as permitted under Panamanian law, against the defendant, TEXACO PANAMA, INC. This was basically a workmens' compensation claim and the beneficiary of the decedent may recover only if the death was caused by a "professional risk". A "professional risk" is one in which the death is a resultant of the type of work that the decedent performed for his employer. It does not include a failure to furnish adequate and prompt medical treatment which is a cause of action recognizable under the Jones Act, *supra*. Ultimately, while victorious in the lower Panamanian courts, plaintiff's claim failed because of a ruling that she had not met her burden of establishing that the cause of death stemmed from a "professional risk" (A22).

Texaco Panama, Inc., hereinafter called Texpan, is a corporation incorporated under the laws of the Republic of Panama with its ostensible and principal place of business at Panama City, Republic of Panama. It operates a refinery in Panama and a string of service stations. In addition, it is the listed owner of a fleet of vessels under various flags (British, Liberian and Panamanian). The fleet engages in international shipping and repeatedly calls in the Delaware River estuary of ports in Pennsylvania, New Jersey and Delaware. The activities of Texpan in Panama were relatively minimal, consisting mainly of servicing local gas stations and operating a refinery. The contact with the tanker fleet was minimal. Panamanians served on only a few vessels and then only as unlicensed personnel. The officers and stewards department were not Panamanian. Aboard the Texaco Kenya, the officers and stewards department were Italians. Both the president of Texpan and the marine superintendent displayed ignorance of how and when the vessels were acquired, how much was paid for them, where they were to be utilized and any of the necessary details involved in the operation of a tanker fleet.[1] It was claimed that the tanker fleet was operated by Texaco Overseas Tankship, Ltd., hereinafter called TOT, a corporation organized under the laws of the United Kingdom with an ostensible principal place of business in London, England. TOT is 100% owned by Texaco, Ltd., a British corporation. Texaco, Ltd., in turn, is 100% owned by Texaco Operations (Europe), Ltd., a Delaware corporation. Texaco Opera-

1. See Depositions of Robert W. Chandler, President of Texpan, and Mr. Munoz, Marine Superintendent of Texpan. Depositions were not printed, but submitted under the liberal application of Federal Appellate Rule 30(a) for consideration by the Court of Appeals. The depositions demonstrate in addition the free transfer of Texaco personnel within the various corporations, of which Texaco, Inc. was the ultimate owner.

tions (Europe), Ltd. like Texpan is 100% owned by Texaco, Inc., a Delaware corporation with its principal office in New York City, New York.

On August 3, 1976, the United States District Court for the Eastern District of Pennsylvania in its opinion set forth in the appendix dismissed the cause of action upon the grounds of forum non conveniens. The Court in its opinion and order specifically refused to reach or consider the adjudication in Panama and whether or not it constituted res judicata.

Timely appeal was taken to the United States Court of Appeals for the Third Circuit pursuant to 28 U. S. C. 1291 and 28 U. S. C. 1292-3.

On August 12, 1977, the decision of the United States District Court for the Eastern District of Pennsylvania was affirmed by the United States Court of Appeals for the Third Circuit in an opinion which conceded that its affirmation was in direct conflict with the United States Court of Appeals for the Second Circuit. In its opinion, the United States Court of Appeals for the Third Circuit refused to find such substantiality as would warrant Jones Act jurisdiction, notwithstanding the 100% ownership of Texpan by an American corporation, Texaco, Inc.

REASONS FOR GRANTING THE WRIT.

The Court of Appeals for the Third Circuit Opinion Directly Challenges the Second Circuit's Holdings That Beneficial Ownership of the Shipowner Corporation Is Such American Contact as Standing Alone Warrants the Application of the Jones Act and When the Same American Corporation Is Also the Beneficial Owner of the Managing and Operating Corporations of the Same Fleet.

This Court, except in unusual circumstances, has granted certiorari where there has been a clearly-defined conflict between circuits. The instant case is in direct conflict with *Antypas v. Cia Maritima San Basilo,* S.A., 541 F. 2d 307, 310 (2nd Cir. 1976), cert. den. 97 S. Ct. 1116 (1977) and *Moncado v. Lemuria Shipping Corp.*, 491 F. 2d 470, 473 (2nd Cir. 1974), cert. den. 417 U. S. 947.[2] That such a conflict exists is recognized by the Court below when it said:

> "We note that federal courts in the Second Circuit have taken an expansive view on the question of the export of American maritime law, viewing American stock ownership in a ship owning corporation as sufficient to justify the extraterritorial application of the Jones Act. *See, e.g.*, Antypas v. Cia. Maritime San Basilio, S.A., 541 F. 2d 307, 310 (2d Cir. 1976); Moncada v. Lemuria Shipping Corp., 491 F. 2d 470, 473 (2d Cir.), *cert. denied sub nom.*, Ekberg Shipping Corp. v. Moncada, 417 U. S. 947 (1974); Rainbow

2. No case or instance has been cited by the defendants or by any of the courts below in which jurisdiction has been refused on the grounds of forum non conveniens where the beneficial owner is American.

Line, Inc. v. M/V Tequila, 480 F. 2d 1024, 1027 (2d Cir. 1973); Bartholomew v. Universe Tankships, *supra,* 263 F. 2d at 443 n. 4; Fitzgerald v. Angela Compania Naviera, S.A., 417 F. Supp. 151 (S. D. N. Y. 1976); Bobolakis v. Cia. Panamena Maritima, San Gerassimo, 168 F. Supp. 236 (S. D. N. Y. 1958). For the reasons stated above, we decline to take so broad a view of the reach of the Jones Act. Moreover, the Second Circuit, in Fitzgerald v. Texaco, Inc., 521 F. 2d 448 (2d Cir. 1975), *cert. denied,* 423 U. S. 1052 (1976) affirmed a forum non conveniens dismissal of plaintiff's collision action against Texpan, the same party presently before us."

(A14)

The Court below was in error in including *Fitzgerald v. Texaco, Inc.,* 521 F. 2d 448 (2nd Cir. 1975) cert. den. 423 U. S. 1052 (1976) as an erosion of the position of the Second Circuit. The *Fitzgerald v. Texaco Inc.* case was not a Jones Act case. Fitzgerald was a Public Administrator of the County of New York representing twelve estates of deceased German seamen serving aboard the M/V Brandenburg, a German vessel which had struck the wreckage of the S/T Texaco Caribbean, a Panamanian vessel owned by Texaco Panama, Inc. The S/T Texaco Caribbean lay submerged twelve miles from the coast of England as a result of a collision the previous day with the M/V Paracas, a Peruvian vessel, and claims were based on Texaco Panama's alleged failure properly to mark the wreckage of the S/T Texaco Caribbean.

Both *Moncada v. Lemuria Shipping Corp., supra,* and *Antypas v. Cia Maritima San Basilio, S.A., supra,* clearly state that a significant beneficial interest by an American in itself warrants Jones Act jurisdiction.

In *Moncada v. Lemuria Shipping Corp., supra,* the Court of Appèals for the Second Circuit held:

"Of the contacts favoring the plaintiff in the present case, the most important is that all of the stock of all the defendants was owned by Americans. In *Bartholomew* we suggested that American ownership alone suffices to establish Jones Act jurisdiction. 263 F. 2d at 443 n. 4. That position was expressly adopted by then District Judge Irving R. Kaufman in *Bobolakis v. Compania Panamena Maritima San Gerassimo, S.A.,* 168 F. Supp. 236 (S. D. N. Y. 1958)."

(page 473)

In *Antypas v. Cia. Maritima San Basilio, S.A., supra,* in a well-reasoned opinion by Associate Justice Clark, U. S. Supreme Court retired, sitting by designation, in the Second Circuit, he wrote:

"We find these contacts between the transaction involved and the United States to be substantial and that Jones Act jurisdiction exists. It appears that at least some of the stockholders of the shipowner, San Basilio, are American citizens. This contact, in and of itself, has been held sufficient to support jurisdiction under the Jones Act. *Bobolakis v. Cia. Panamena Maritima, San Gerassimo,* 168 F. Supp. 236 (S. D. N. Y. 1958).

(page 310)

Bartholomew v. Universe Tankships, Inc., 263 F. 2d 437, 442 also dealt with the same principle that an American beneficial owner necessitates the application of the Jones Act, 46 U. S. C. 688 et seq. Judge Medina in that opinion, said:

"What we now do is not to disregard the corporate entity to impose liability on the stockholders, but rather to consider a foreign corporation as if it were

an American corporation pursuant to the liberal policies of a regulatory act."

(page 442)

This Court has ordinarily granted certiorari where there is a direct conflict between the decisions of courts of appeal upon questions of federal law.[3]

The instant case is also an implicit rejection of this Court's decision in *Hellenic Lines, Ltd. v. Rhoditis,* 398 U. S. 306, 26 L. Ed. 2d 252, 90 S. Ct. 1731, Reh. Den., 400 U. S. 856, 27 L. Ed. 2d 94, 91 S. Ct. 23 (1970). In that case, the man's contract for employment had been entered into in Greece and provided for adjudication in the Greek courts of all claims arising thereunder. More than 95% of the stock of the Greek corporation was owned by a Greek citizen who was a lawful permanent resident alien and who managed the corporation out of New York. This Court found that the flag, the nationality of the seaman, the fact that his employment contract was Greek and that he might be compensated there, are under the totality of the circumstances, minor weights in the scales compared with the substantial continuing contacts that the major owner of the stock of the Greek corporation had with this country. A Greek corporation was, therefore, an "employer" under the Jones Act.

It is submitted that the Court of Appeals for the Third Circuit and the trial court erred in two basic assumptions. First, that *Lauritzen v. Larsen,* 345 U. S. 571, 587, 588, 97 L. Ed. 1254, 1270, 73 S. Ct. 921 provides a basis for denying Jones Act jurisdiction to the plaintiff herein. They are in error. Justice Jackson in *Lauritzen v. Larsen, supra,* at the above designated pages, said of the "allegiance of the defendant shipowner" as a criteria for providing the substantial American contact as to warrant jurisdiction:

3. *Jurisdiction of the Supreme Court of the United States,* By Richard F. Wolfson and Philip B. Kurland. p. 627 § 322 (1951).

Allegiance of the Defendant Shipowner.—A state "is not debarred by any rule of international law from governing the conduct of its own citizens upon the high seas or even in foreign countries when the rights of other nations or their nationals are not infringed." *Skiriotes v. Florida,* 313 U. S. 69, 73, 85 L. ed. 1193, 1198, 61 S. Ct. 924; *Steele v. Bulova Watch Co.,* 344 U. S. 280, 282, ante, 319, 322, 73 S. Ct. 252. Until recent times this factor was not a frequent occasion of conflict, for the nationality of the ship was that of its owners. *But it is common knowledge that in recent years a practice has grown, particularly among American shipowners, to avoid stringent shipping laws by seeking foreign registration eagerly offered by some countries. Confronted with such operations, our courts on occasion have pressed beyond the formalities of more or less nominal foreign registration to enforce against American shipowners the obligations which our law places upon them. But here again the utmost liberality in disregard of formality does not support the application of American law in this case, for it appears beyond doubt that this owner is a Dane by nationality and domicile."*

(emphasis supplied)

Thus, it can be seen that the groundwork was laid for the subsequent decisions in *Bartholomew, Antypas, Moncada* and *Rhoditis, supra.* The important factor that in itself provides the necessary substantiality required by *Lauritzen v. Larsen, supra,* was the 100 percent ownership of Texpan by Texaco, Inc. This the court below would dilute by a recital that it is a multi-national corporation; that its stock is listed in various exchanges; and conjecture as to the ownership of the stock of Texaco, Inc. We submit that these are irrelevancies.

Texaco, Inc. is an American corporation. It is a juridicial person. The anonymity of its stockholders that precludes personal liability also precludes such dilution that would find Texaco, Inc. anything but American.

The court goes on to say that it would be extreme suggestion that American law could govern relationships between Texpan and the employees in its Panamanian gasoline stations. This is another irrelevancy. The Jones Act applies only to seamen who are members of a crew of a vessel. While the SS Texaco Kenya may have been engaged in the transportation of petroleum in the Central American area, we submit that is not the test. A better test would be where do the various vessels owned by Texpan ply their trade? The Court of Appeals conceded that Texpan vessels call regularly in the Delaware River estuary at ports in New Jersey, Pennsylvania and Delaware. When Reyes served on the SS Texaco London, that vessel was involved in global voyages. Charges of social jingoism ignore the fact that Congress has consistently exhibited concern as to the plight of foreign seamen.[4]

So the use by an American corporation of a buffer corporation places upon that American corporation the continuing obligation of providing the seamen who serve aboard those vessels in which they have a beneficial interest the obligation to afford the protective mantle of the Jones Act and/or The Death on the High Seas Act.

The trial Court did not reach the issue of defendant's contention that the proceedings in Panama were res judicata to the instant case. It is clear from the testimony of

4. 46 U. S. C. 597 provides that any seaman, even on a foreign vessel in a United States port, may receive on demand from the master of that vessel to which he belongs one-half part of the balance of his wages earned and remaining unpaid. See also 46 U. S. C. 599, which makes it unlawful even for a foreign master to pay a foreign seaman wages in advance of a time when he has actually earned the same or permit any allotment therefor.

Durling, a Panamanian lawyer, that the proceeding in Panama is akin to a Workmen's Compensation Act (N. T. Durling, p. 49). It is also clear from Durling's testimony that that remedy in no way approximates the Jones Act remedy:

> "Q. And, as I understand the decision, it was not sufficient for the plaintiff to carry his case that he could show that he did not receive adequate medical treatment; that in itself was not sufficient to provide a basis for recovery?
>
> A. That's not sufficient. According to our law, it is not sufficient to sustain that the death was motivated or was caused by a professional risk. It is necessary, as I explained before, to establish the relation between the death and the work performed by the employee.
>
> . . .
>
> "Q. Then if I may summarize your understanding of the supreme court decision, the plaintiff's case failed because the original illness was not shown to be work-connected?
>
> A. The cause of the death of Theodore Reyes Atares, that was a matter discussed very amply in the lawsuit. Some of them, especially the secretary of the union, said that Theodore Reyes Atares apparently died due to improper medical attention while on board the vessel.
>
> Q. Now, that's the point I am trying to get at. If that is so, and if, in fact, Theodore Reyes did not get proper medical attention or didn't get prompt medical attention, would that be sufficient for him to prevail?
>
> A. No, that's not sufficient. He has to prove that there is some work connection, as you mentioned before in your summary. He must prove that fact.

Q. There must be a work connection with the original illness?

A. That's correct."

(N. T. Durling, p. 52, 53)

The cases are legend that Jones Act jurisdiction has not been ousted by prior workmens' compensation proceedings, even when reduced to a payment. *Biggs v. Norfolk Dredging Co.*, 360 F. 2d 360 (1966); *Shaver Transportation Co. v. Chamberlain*, 399 F. 2d 893 (1968); *Massey v. Williams-McWilliams, Inc.*, 414 F. 2d 675 (1969), *Boatel, Inc. v. Delamore*, 379 F. 2d 850 (1967); *Spiller v. Thomas M. Lowe and Associates, Inc.*, 328 F. Supp. 54 (1971).

It is clear from Durling's deposition testimony that the remedy in Panama being a Workmen's Compensation Act that statutory benefits does not include within its range pain and suffering, *Downie v. U. S. Lines Co.*, 359 F. 2d 344 (C. A. 3) and the loss of society and comfort as discussed in detail in *Sealand Services, Inc. v. Gaudet*, 414 U. S. 573.

In *Gillespie v. United States Steel Corp.*, 379 U. S. 148, 154, 155, 13 L. Ed. 2d 199, 204, 205, 85 S. Ct. 308 (1964), the United States Supreme Court found that for the death of a seaman killed in the course of his employment, the Jones Act is an exclusive remedy superseding all other death statutes which might otherwise be applied to maritime deaths. The trial Court attempted to distinguish the sweeping language of that case by finding it applicable only to state statutes. The mandate for uniformity as expressed by Congress and fulfilled by the Court would equally fail if a seaman otherwise entitled to the Jones Act remedy were to receive the benefits of a foreign statute improvidently chosen, or even if it were to provide greater benefits.

CONCLUSION.

Just at the time that the courts had evolved a workable formula for determining when Jones Act jurisdiction will affix, it has been rendered murky by the opinion in the Court of Appeals for the Third Circuit. It is erroneous for the Court of Appeals to second guess the intention of Congress, to wildly throw charges of social jingoism and to plead the plight of the multi-national corporation when the criteria of *Lauritzen v. Larsen* have been reduced to a workable formula. If the decision of the Court of Appeals for the Third Circuit is permitted to stand, it shall invite uncertainty where it had not heretofore existed. It is significant that neither the Court of Appeals for the Third Circuit nor the trial judge nor the defendants could point to a single case where the beneficial owner is American and Jones Act jurisdiction has been denied. The opinion of the Third Circuit would sharply highlight the deferential treatment accorded American seamen serving aboard vessels owned by American corporations and those serving aboard vessels still owned by American corporations but between which a buffer corporation of convenience has been inserted.

It is prayed that certiorari will be granted so that the conflict between the Court of Appeals for the Third Circuit and the Court of Appeals for the Second Circuit may be resolved.

Respectfully submitted,

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Appendix.

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

No. 76-2313

AMELIA ZAMORA DE MATEOS, Administratrix of the Estate of THEODORE REYES, Deceased,
Appellant

v.

TEXACO, INC. and TEXACO PANAMA, INC.
(D. C. Civil Action No. 72-373)

APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF PENNSYLVANIA

Argued May 6, 1977

Before GIBBONS, MARIS and HUNTER, *Circuit Judges*

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OPINION OF THE COURT

(Filed August 12, 1977)

GIBBONS, *Circuit Judge*

Amelia Zamora DeMateos, Administratrix of the Estate of her son, Theodore Reyes, a Panamanian seaman, appeals from an order of the district court dismissing her suit against Texaco Panama, Inc. (Texpan), a Panamanian corporation, because the Eastern District of Pennsylvania is an inconvenient forum for the litigation. Her suit was brought under general maritime law, the Jones Act, 46 U. S. C. §§ 688 *et seq.*, and the Death on the High Seas Act, 46 U. S. C. §§ 761 *et seq.* Reyes was a seaman aboard the S. S. Texaco Kenya, owned by Texpan, on a voyage between Honduras and Costa Rica when on February 18, 1970 he became ill. On arrival of the vessel at Puerto Limon, Costa Rica on February 23rd he was transferred to a hospital where he died the following morning. His mother, the plaintiff, alleges that his death resulted from the failure of Texpan's agents in charge of its vessel to give him prompt and adequate medical attention. She charges both negligence and unseaworthiness, consisting of lack of proper medical facilities. She alleges, moreover, that the illness which resulted in her son's death was caused by an unseaworthy condition on the vessel which permitted him to inhale toxic fumes. We conclude that the District Court did not abuse its discretion in dismissing the complaint, and we affirm.

I

The S. S. Texaco Kenya is a vessel of Liberian registry, owned by Texpan, a Panamanian corporation which has a principal place of business in Panama City. The corporation not only owns vessels but also engages in the

business of marketing petroleum products in Panama. Reyes signed on as a crew member of the Texaco Kenya in March, 1969 in Panama, where he executed an employment contract incorporating standard "Conditions of Employment" which had been approved by the Labor Ministry of Panama for Panamanian seamen. Those conditions provide for the application of Panamanian law to disputes arising out of Reyes' status as an employee. Prior to and during the voyage on which Reyes became ill, the Texaco Kenya was employed in short run voyages in the Caribbean, none of which were within the territorial waters of the United States. While Texpan owns the Texaco Kenya, the vessel is managed, pursuant to a ship management agreement, by Texaco Overseas Tankship Limited (TOT), a United Kingdom corporation with its principal place of business in London. TOT is engaged in international shipping. It is a wholly owned subsidiary of Texaco Limited, a United Kingdom corporation with its principal place of business in London. Texaco Limited, in turn, is wholly owned by Texas Operations (Europe) Ltd. (TOEL), a Delaware corporation. Texaco, Inc., a Delaware corporation the stock of which is listed on the New York, Midwest, London, Toronto, Basle, Geneva and Zurich stock exchanges, owns all the stock of TOEL and of Texpan.

Following Reyes' death on September 16, 1971, Mrs. DeMateos and others instituted suit in the Third Labor Court of Panama against Texpan. Under Panamania law, designated beneficiaries of a deceased seaman may recover from an employer for death caused by a "professional risk" to which the employee was exposed by reason of the work he performed for his employer. On August 16, 1972, the Third Labor Court rendered judgment for the plaintiffs. On appeal to the Superior Court of Panama the judg-

ment was affirmed. Texpan then appealed to the Supreme Court of Justice of Panama, which reversed on June 6, 1973, holding that the plaintiffs had failed to carry the burden of establishing that Reyes' death was caused by a "professional risk". Texpan has at all times disputed the claim that Reyes' illness and death had anything to do with his service on the Texaco Kenya. The Panamanian law appears to be in the nature of a workmen's compensation statute imposing liability without fault for death arising from "professional risk," but imposing on the plaintiff the burden of establishing that the death arose out of an employment risk. The June 6, 1973 judgment of the Supreme Court of Justice of Panama in favor of Texpan is a final judgment of a sovereign state having in personam jurisdiction of the parties.

II

Before the Third Labor Court of Panama rendered its decision, but while the case was pending before it, Mrs. DeMateos, on February 3, 1972, filed a complaint against Texaco, Inc. and Texpan in the Eastern District of Pennsylvania. Service of process was made in personam on Texaco, Inc., but not on Texpan. Texaco, Inc. moved for summary judgment, which was initially denied. No effort was made to serve Texpan in personam under Pennsylvania's long arm statute, 42 Pa. C. S. A. § 8301 *et seq.* and F. R. Civ. P. 4(e), (i). However, in June of 1974, apparently following an attachment of a Texpan vessel other than the Texaco Kenya, pursuant to the Pennsylvania's Foreign Attachment Rules, 42 Pa. R. C. P. No. 1251 *et seq.*, 42 Pa. C. S. A., the parties entered into a stipulation by virtue of which the action against Texaco, Inc. was dismissed with prejudice and counsel accepted service on behalf of Texpan "as if a vessel of [Texpan] had been

legally attached in the Eastern District of Pennsylvania." That stipulation antedated this court's opinions in *Jonnet v. Dollar Savings Bank*, 530 F. 2d 1123, 1130-1143 (3d Cir. 1976) and *U. S. Industries v. Gregg*, 540 F. 2d 142 (3d Cir. 1976), *cert. denied*, 45 U. S. L. W. 3838 (June 28, 1977), as well as the Supreme Court's endorsement in *Shaffer v. Heitner*, 45 U. S. L. W. 4849 (June 24, 1977) of our view that quasi-in-rem jurisdiction to adjudicate is subject to the same due process limitations as is in personam jurisdiction. Thus the case against Texpan was before the court in the posture of an appearance, following a foreign attachment, with no objection made to the court's process.

After extended discovery, the parties submitted the case to the district court as a case stated, consisting of the completed discovery and submission by counsel of certain undisputed facts, for the decision of Texpan's contentions, (1) that the Panama judgment in its favor should, under principles of international law, be afforded res judicata effect as a matter of comity, and (2) that even if that judgment was not dispositive, American maritime law was inapplicable to the transaction, and the case should be dismissed. The District Court, in a thorough and well-reasoned opinion, concluded that American maritime law should not apply, and that the case should be dismissed in this inconvenient forum.[1] It did not reach the first issue tendered by Texpan because it concluded that the parties had not supplied it with sufficient information to make such a determination.

III

The doctrine of forum non conveniens presupposes the existence of at least two forums in which the defendant is

1. DeMateos v. Texaco Panama, Inc., 417 F. Supp. 411 (E. D. Pa. 1976).

amenable to process. A stipulation made Texpan amenable to process in the Eastern District of Pennsylvania, while its incorporation and presence made it so amenable in Panama. If the two or more available forums are federal, 28 U. S. C. § 1404(a) mitigates the possible harshness of the forum non conveniens rule by providing for transfer rather than dismissal. But where the other available forums are non-federal—state or foreign—the traditional forum non conveniens remedy of dismissal is appropriate. *See generally 1 J. Moore, Federal Practice* ¶ 0.145 [6.-1], P. 1635, n. 4 (1976) and cases there cited.

Texpan admits that vessels owned by it regularly called at ports in New Jersey, Pennsylvania and Delaware. The Jones Act, 46 U. S. C. § 688, provides that in Jones Act cases,

> [j]urisdiction . . . shall be under the court of the district in which the defendant employer resides or in which his principal office is located.

Although § 688 uses the term "jurisdiction," it has been construed to be a venue statute. *Panama R. Co. v. Johnson*, 264 U. S. 375 (1924). It incorporates the venue provision of 28 U. S. C. § 1391(C) which allows suit against a corporation.

> . . . in any judicial district in which it is incorporated or licensed to do business or is doing business, and such judicial district shall be regarded as the residence of such corporation for venue purposes.

See Pure Oil Co. v. Suarez, 384 U. S. 202, 204 (1966). Thus the Eastern District of Pennsylvania was a permissible venue. However, in considering the propriety of a venue transfer pursuant to 28 U. S. C. § 1404(a) the Court

has emphasized that such a transfer should not, despite its convenience, result in a change in the applicable law. *Van Dusen v. Barrack*, 376 U. S. 612, 626-43 (1964). That principle is no less applicable to a dismissal on forum non conveniens grounds.

The Jones Act, the Death on the High Seas Act, and American maritime law could be applied in the several federal forums in which Texpan could be sued, including the Eastern District of Pennsylvania. American law was not applied in Panama, and it seems clear that even if any forum now remains open in that jurisdiction it would apply its own rather than American law. The propriety of the forum non conveniens dismissal would seem to turn, then, on whether the District Court was correct in concluding that American law does not apply. The court recognized that the factors applicable to a forum non conveniens determination were set forth in the leading case of *Gulf Oil Co. v. Gilbert*, 330 U. S. 501, 507-09 (1947).[2] Among those factors, the Supreme Court observed,

> "[t]here is an appropriateness, too, in having the trial . . . in a forum that is at home with the state law that must govern the case, rather than having a court in some other forum untangle problems in conflict of laws, and in law foreign to itself." 330 U. S. at 509.

2. These include the private interests of the litigants, among them the relative ease and access to sources of proof; the availability of compulsory process compel the attendance of unwilling witnesses; the cost of obtaining the attendance of witnesses; and the possibility of obtaining a view of the premises, when relevant. Also to be considered are issues of enforceability of judgments and possibility of a fair trial. *Gulf Oil* acknowledges that forum non conveniens determinations also implicate public interests, such as the courts' caseloads the unfairness of burdening citizens in an unrelated forum with jury duty, and the avoidance of creating difficult choice of laws problems which might result in a forum being required to apply a law unfamiliar to it.

Since application of the other *Gulf Oil Co. v. Gilbert* factors are not matters of dispute the District Court concentrated on this last.

IV

The Jones Act and the Death on the High Seas Act are written in language so broad as to apply to any seaman on any vessel of any nation at any location on the globe. Obviously, however, the due process clause of the fifth amendment places bounds upon congressional efforts to apply American rules of decision to transactions in which the United States has no sufficient interest. In this respect, in the international arena, fifth amendment due process serves the same purpose as does fourteenth amendment due process with respect to the states. For this reason, as well as out of consideration of traditionally accepted notions of international law, these statutes have not been construed literally. Their reach, for our purposes, is found in *Lauritzen v. Larsen*, 345 U. S. 57 (1953) and *Hellenic Lines Ltd. v. Rhoditis*, 398 U. S. 306 (1970). In the former, Justice Jackson considered the claim of a Danish seaman, temporarily resident in New York, who had signed articles in New York providing that rights of crew members of a ship of Danish registry would be governed by the law of Denmark. The seaman was injured in Cuban territorial waters. Notwithstanding two contacts with New York, temporary residence and place of contracting, the Court held that the Jones Act was inapplicable. The Court identified seven relevant choice of law factors:

1. The place of the wrongful act
2. The law of the ship's flag
3. The allegiance or domicile of the injured seaman

4. The allegiance of the shipowner
5. The place where the shipping articles were signed
6. The inaccessability of a foreign forum
7. The law of the forum.

Of the seven factors discussed in *Lauritzen* the first six concededly point toward the inapplicability of American law to the instant death claim. As to the last, the law of the forum, Justice Jackson wrote:

> "We have held it a denial of due process of law when a state of the Union attempts to draw into control of its law otherwise foreign controversies, on slight connections, because it is a forum state. *Hartford Accident & Indemnity Co. v. Delta & Pine Land Co.*, 292 U. S. 143; *Home Insurance Co. v. Dick*, 281 U. S. 397. The purpose of a conflict-of-laws doctrine is to assure that a case will be treated the same way under the appropriate law regardless of the fortuitous circumstances which often determine the forum. Jurisdiction of maritime cases in all countries is so wide and the nature of its subject matter so far-flung that there would be no justification for altering the law of a controversy just because local jurisdiction of the parties is obtainable." 345 U. S. at 590-91.

As Judge Hunter recognized in *Henry v. Richardson-Merrell, Inc.*, 508 F. 2d 28, 39, n. 25 (3d Cir. 1974), this was a clear acknowledgement that due process required the identification of significant American interests before an American sovereignty, state or federal, could export its law to foreign transactions, maritime or others. *Lauritzen* held that the American contacts of the seaman's temporary residence in New York, where the vessel called and where

he signed on, was insufficient for the application of American law to a Danish vessel and a Danish seaman for an injury outside our territorial waters.

If *Lauritzen* were the last word it would appear to be controlling. In *Hellenic Lines, Ltd. v. Rhoditis,* however, the Court introduced a new factor, Justice Douglas, writing for the Court, considered the Jones Act claim of a Greek seaman, who signed on in Greece, on a vessel of Greek registry owned by a Panamanian corporation, with an employment contract providing for adjudication of claims arising out of the employment relationship in Greek Courts, for an injury in the Port of New Orleans. The vessel on which he served was managed by Hellenic Lines, Ltd., a Greek corporation 95% of the stock of which was owned by Pericles G. Callimanopoulos, a Greek citizen, but a permanent resident of the United States. Hellenic Lines, Ltd. maintained its largest office in New York, and had another office in New Orleans. The vessel in question was managed by the New York office, and derived its entire operating income from cargo originating or terminating in the United States. Expressly approving the opinion of Judge Medina in *Bartholomew v. Universe Tankships, Inc.,* 263 F. 2d 437 (2d Cir. 1959), Justice Douglas, while acknowledging the significance of the seven factors listed in *Lauritzen,* said

> ". . . the shipowner's *base of operations* is another factor of importance in determining whether the Jones Act is applicable; and there well may be others.
>
> . . .
>
> We see no reason whatsoever to give the Jones Act a strained construction so that this alien owner, engaged in an extensive business operation in this country, may have an advantage over citizens engaged in the same business by allowing him to escape the obligations and responsibility of a Jones Act "employer." 398 U. S. at 309, 310. (Emphasis in original).

Perhaps as significant as what Justice Douglas wrote is what he quoted from Judge Medina's *Bartholomew* opinion:

> "Thus each factor is to be 'weighed' and 'evaluated' only to the end that, after each factor has been given consideration, a rational and satisfactory conclusion may be arrived at on the question whether all the factors present add up to the necessary substantiality. Moreover, each factor, or contact, or group of facts must be tested in the light of *the underlying objective, which is to effectuate the liberal purposes of the Jones Act.*" 263 F. 2d at 441 (emphasis supplied).

With deference both to Justice Douglas and to Judge Medina, it would seem that the underlying purpose for identifying and weighing factors is not to effectuate the liberal purposes of the Jones Act, but to determine whether, within the limits of due process that Act could, and within the limits of the assumed congressional deference to the conventions of international law that Act should, be applied to the transaction in question. But while the *Rhoditis* opinion gives us less than complete illumination on the choice of law problem in international shipping, we do not understand it to be an abandonment of the fundamental teachings of *Lauritzen;* fundamentals that in the interstate context were recently reiterated by the Court in *Shaffer v. Heitner, supra.* As a leading commentator observed:

> "Rhoditis (like Lauritzen) suffers from the customary weakness of any judicial decision. Just as Lauritzen, on its facts, had been almost the weakest possible case

for the application of American law on any theory, so Rhoditis was the strongest possible case for its application on what may be called the 'base of operations' theory (assuming the 'base of operations' is in any way relevant, which the dissenting Justices denied). Not only had the beneficial owner been a resident of the United States for twenty years, conducting the affairs of his corporation from offices in this country, but the ship involved seems to have been employed exclusively in, and to have derived all its income from, trade with the United States. While a flat overruling of Rhoditis appears to be unlikely, extension of the base of operations doctrine to enterprises less clearly linked to the United States appears to be equally unlikely."

G. Gilmore and C. Black, *The Law of Admiralty*, 475 (2d ed 1975).

Here the Texaco Kenya was employed in transportation of petroleum between foreign nations. There is no evidence that it ever earned income from voyages to the United States. The vessel's base of operations, if it was not Panama, was London, where TOT performed the management services that in the *Rhoditis* case were performed by Mr. Callimanopoulos in New York. Thus even the "base of operations" factor on which Justice Douglas relied in distinguishing *Lauritzen* is inapplicable here. The place of the injury, the law of the ship's flag, the allegiance or domicile of the injured seaman, the allegiance of Texpan, the place where Reyes signed the shipping articles, the accessability of a foreign forum to which Mrs. DeMateos actually resorted, and the base of operations of the vessel all point away from the application of American law. If we are to justify its application it must be because,

as Justice Douglas suggested in *Rhoditis*, there well may be other significant factors. The only one we are referred to, however, is the ownership by Texaco, Inc. of the stock of Texpan, and through TOEL of the stock of TOT.

Mrs. DeMateos would have us hold that such ownership, alone, is sufficient. Texaco, Inc., though incorporated in Delaware, is in every sense a multinational corporate enterprise. Since its stock is listed on exchanges across the United States and Europe, and is traded, though unlisted, on the Cincinnati, Philadelphia, Baltimore, Washington, Boston and Pacific exchanges as well, and since ownership of that stock is available to anyone, there is no indication in the record before us of the citizenship or domicile of its stockholders. We assume, however, that many are Americans. The District Court's findings of fact, which are not disputed, disclose that both Texpan and TOT are separate and solvent legal entities, with separate boards of directors, maintaining separate books of account. Texpan, in particular, has an extensive business in Panama in the sale of petroleum products both retail and wholesale. It would be an extreme suggestion, we think, that American law could govern relations between Texpan and the employees in its Panamanian gasoline stations because its stock was owned by a multinational business enterprise incorporated in Delaware. It is no less extreme to suggest that American law should govern the relations between Texpan and its employees on vessels it uses in the transportation of petroleum between Central American countries. Either suggestion is a variety of social jingoism, which presumes that the "liberal purposes" of American law must be exported to wherever our multinational corporations are permitted to do business. Some of our laws, to other nations, may not appear as liberal as the Jones Act appears to us, and extreme applications of such an effort might well result in

those nations closing their door to such corporations, to their and our competitive disadvantage. Even if we assume that Texaco, Inc.'s ownership of the stock of Texpan is a sufficient American contact to justify, for due process purposes, the application of American law to Texpan's Panamanian employees (a dubious assumption), we do not thing Congress, in enacting the Jones Act and the Death on the High Seas Act, intended that result. *Cf. Windward Shipping (London) Ltd. v. American Radio Ass'n.*, 415 U. S. 104, 112-13 (1974).[3] Thus we conclude that the District Court, recognizing that American Law would not apply, was justified in dismissing the complaint because the Eastern District of Pennsylvania is an inappropriate forum.

The judgment of the district court will be affirmed.

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3. We note that federal courts in the Second Circuit have taken an expansive view on the question of the export of American maritime law, viewing American stock ownership in a ship owning corporation as sufficient to justify the extraterritorial application of the Jones Act. *See, e.g.*, Antypas v. Cia. Maritime San Basilio, S.A., 541 F. 2d 307, 310 (2d Cir. 1976); Moncada v. Lemuria Shipping Corp., 491 F. 2d 470, 473 (2d Cir.), *cert. denied sub nom.*, Ekberg Shipping Corp. v. Moncada, 417 U. S. 947 (1974); Rainbow Line, Inc. v. M/V Tequila, 480 F. 2d 1024, 1027 (2d Cir. 1973); Bartholomew v. Universe Tankships, *supra*, 263 F. 2d at 443 n. 4; Fitzgerald v. Angela Compania Naviera, S.A., 417 F. Supp. 151 (S. D. N. Y. 1976); Bobolakis v. Cia. Panamena Maritima, San Gerassimo, 168 F. Supp. 236 (S. D. N. Y. 1958). For the reasons stated above, we decline to take so broad a view of the reach of the Jones Act. Moreover, the Second Circuit, in Fitzgerald v. Texaco, Inc., 521 F. 2d 448 (2d Cir. 1975), *cert. denied*, 423 U. S. 1052 (1976) affirmed a forum non conveniens dismissal of plaintiff's collision action against Texpan, the same party presently before us. Although Judge Oakes' dissent stressed the ownership of Texpan's stock by Texaco, Inc., which has offices in New York, the Second Circuit refused to find such ownership controlling. Such a decision, from the Circuit which has put heavy emphasis on the factor of stock ownership in other cases, reinforces our conclusion that the district court's dismissal on forum non conveniens grounds in this case was not an abuse of discretion.

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

No. 76-2313

AMELIA ZAMORA DE MATEOS, Administratrix of the Estate of THEODORE REYES, Deceased,
Appellant

v.

TEXACO, INC. and TEXACO PANAMA, INC.

(D. C. Civil Action No. 72-373)

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

Present: GIBBONS, MARIS and HUNTER, *Circuit Judges.*

JUDGMENT.

This cause came on to be heard on the record from the United States District Court for the Eastern District of Pennsylvania and was argued by counsel on May 6, 1977.

On consideration whereof, it is now here ordered and adjudged by this Court that the judgment of the said District Court, filed August 3, 1976, be, and the same is hereby affirmed. Costs are taxed against the appellant.

ATTEST:

M. ELIZABETH FERGUSON
Chief Deputy Clerk

August 12, 1977

IN THE
UUITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

Civil Action No. 72-373

AMELIA ZAMORA DE MATEOS, Adminstratrix of the Estate of THEODORE REYES, Deceased

v.

TEXACO PANAMA, INC.

OPINION AND ORDER.

FOGEL, *J.* August 3, 1976

Plaintiff in this action, Amelia Zamora De Mateos, is the Administratrix of the estate of her son, Theodore Reyes, a Panamanian seaman; he died on February 24, 1970; this litigation followed. Suit has been brought under the admiralty law as modified by the Jones Act, 46 U. S. C. §§ 688 *et seq.*, and the Death on the High Seas Act, 46 U. S. C. §§ 761-768. The complaint alleges that Reyes' death was caused by the unseaworthiness of the vessel, the S. S. Texaco Kenya, and the negligence of the defendant, Texaco Panama, Inc. (Texpan), by its agents; specifically, plaintiff claims that Theodore Reyes was not given prompt or adequate medical attention after he became ill on board the Texaco Kenya on February 20, 1970, and that this dereliction of duty by those in control of the vessel was a proximate cause of his death.

In its present procedural posture, the matter is before us as a case stated for determination of the issue of jurisdiction. The facts adduced by the parties during discovery establish manifold and significant contacts with the Republic of Panama. Thus we are confronted at this juncture with the following two issues: *First:* To what extent should a judgment of the Supreme Court of Justice of Panama, which arises out of the same incident and involves the same parties, be determined by us to be final and binding on the basis of the doctrine of comity between nations? *Second:* Given the factual background of this matter, are there such sufficient contacts with the United States as to permit application of the maritime law of this country?

We have determined, for the reasons stated *infra,* that this matter should be resolved on the *second* of the grounds before us for decision; i.e., the appropriate choice of controlling law. Our determination on this ground therefore obviates the need to venture into the factual and legal morass presented by the first issue. *We hold that the facts of the instant case mandate application of the law of Panama; accordingly, we will decline to take jurisdiction over the matter, and will dismiss the action on the ground of forum non conveniens, based upon the virtually exclusive contacts between the Republic of Panama and the subjects and subject matter of this lawsuit.*

Our disposition of this action through the avenue of "choice of law" negates consideration of the doctrine of comity, and the recognition to be afforded the judgment of a foreign nation. Courts have too often been trapped in that thicket, and have emerged tattered and bloodied; the shredded fabric of decisional law with respect to the interpretation of the standards which govern the application of the doctrine of comity, and the rationale behind those standards in this area are, at best, studied with the thorns of inconsistency.

Because our analysis of the choice of law question convinces us that Panamanian law should be applied, and

because that determination must lead to dismissal of the action on the ground of *forum non conveniens,* we will not decide the issue of comity; such a decision would, in the context of the matter before us be pure, or rather, impure dictum.[1] Our reasons follow:

I. Statement of the Pertinent and Controlling Facts.

The relevant facts, including those stipulated by the parties, are as follows:

A. Introduction.

Plaintiff's decedent, Theodore Reyes, was a citizen and a resident of the Republic of Panama. From approximately May, 1964, until his death on February 24, 1970,

1. Indeed, among the following are the unsettled areas of law with which we would be confronted in considering the comity issue:

(a) Whether, in the context of a suit brought under the federal admiralty jurisdiction, the issue is controlled by a state law, or some "federal common law". *See* Smit, *International Res Judicata and Collateral Estoppel in the United States,* 9 U. C. L. A. L. Rev. 44, 47 (1962); Reese, *The Status in This Country of Judgements Rendered Abroad,* 50 Colum. L. Rev. 783, 786 (1950).

(b) Whether the requirement of reciprocity enunciated by the Supreme Court in Hilton v. Guyot, 159 U. S. 113 (1895), remains valid in the face of continuing criticism by commentators, Smit, *supra,* at 49, and only "desultory acknowledgement" by the courts. Somportex Limited v. Philadelphia Chewing Gum Corp., 453 F. 2d 435 (3rd Cir. 1971), *cert. den.* 405 U. S. 1017 (1972).

(c) Whether, in considering the twin doctrines of *res judicata* and *collateral estoppel,* as applied to the question of recognition of the Panamanian judgment, we are to consider these doctrines under the law of the United States, or of Panama. Smit, *supra,* at 62-63.

It is for these reasons that we have concluded that such a voyage would be both unwise and unwarranted in light of our conclusion that the appropriate ground for disposition is declination of jurisdiction based upon the doctrine of *forum non conveniens.*

he was employed as a seaman by defendant Texpan. During the initial period of his employment, he served aboard the SS Texaco London; he was then transferred to the SS Texaco Kenya in July, 1969, and at the time of his death had attained the status of able-bodied seaman aboard that vessel. The Texaco Kenya is owned by defendant, a Panamanian corporation, purportedly with its principal place of business in Panama City; during the period relevant to this litigation, the vessel was registered in Liberia, and carried that nation's flag.[2]

While aboard the Texaco Kenya, Reyes was employed pursuant to an employment contract executed with defendant in Panama in March, 1969. At the time he signed the employment contract, Reyes agreed to be bound by the "Conditions of Employment" which had been drafted by Texpan for the purpose of governing its relations with Panamanian seamen in its employ.[3] Those conditions unequivocally provide for application of Panamanian law to disputes arising out of his status as an employee.

Texpan, incorporated under the laws of Panama, is a wholly-owned subsidiary of Texaco, Inc., a Delaware corporation, with its principal place of business in New York City. The exact nature of the relationship between Texaco, Inc. and Texpan is a major point of dispute between the parties; plaintiff claims that Texpan is a mere facade to enable Texaco, Inc. to conduct its shipping affairs beyond the reach of the maritime law of the United States, while defendant Texpan maintains that it is a viable entity, separate and apart from its parent. We need not

2. The nationality of the crew members on the Texaco Kenya was as follows: All the unlicensed seamen were Panamanian nationals, while all the licensed and petty officers were Italian nationals.

3. These Conditions were approved by the Labor Ministry of Panama effective April 5, 1968.

decide the full extent of the interrelationship between Texpan and Texaco; it is absolutely clear from the record before us, however, *that Texpan is a viable and separate corporate entity* engaged in the dual enterprise of (a) international shipping, and (2) marketing of petroleum products in the Republic of Panama.

B. The Circumstances Surrounding the Death of Theodore Reyes.

While the precise nature of the events leading to the illness and death of plaintiff's decedent are in dispute, the record before us establishes the following critical facts:

During the period prior to, and encompassing the illness and death of Reyes, the Texaco Kenya was engaged in short run voyages in the Caribbean. On February 18, 1970, the vessel was docked at Puerto Cortes, Honduras, and was scheduled to depart for Puerto Limon, Costa Rica on the following morning. Reyes was on shore leave on February 4th, and failed to appear for his scheduled watch that evening; while he did return before the vessel departed for Puerto Limon on February 19th, he did not arrive at his maneuvering post at the time of castoff, nor did he stand his appointed watch that morning. The cause of this breach of duty is in dispute; defendant claims that Reyes returned from shore leave too intoxicated to stand watch, while plaintiff alleges that Reyes was suffering the onset of his subsequently fatal illness.

Whatever the cause of Reyes' incapacity on February 18th and 19th, the record is clear that by February 20th, he had become ill. On that afternoon, he reported to the Master on the bridge that he was suffering from headaches and weakness in his legs; the Master ordered Reyes to return to his quarters. There was no medical officer on board the Texaco Kenya, but Reyes was visited in his

cabin by the First Officer, and given aspirin tablets and vitamins. However, during the course of the four-day voyage to Puerto Limon, Reyes' condition continued to deteriorate; he gradually lost his ability to walk, and at some point on February 21st or 22nd, he was taken to the ship's hospital in order to enable the ship's officer to monitor his condition on an ongoing basis. The vessel was not diverted from her scheduled route to Puerto Limon, nor was immediate medical assistance requested by radio; however, on February 22nd, the day before arrival in Puerto Limon, the Master of the vessel cabled ahead to request medical assistance immediately upon arrival at that destination.

Reyes was examined by a physician on board the Texaco Kenya while anchored in Puerto Limon harbor on the morning of February 23rd; as a result of that examination he was transferred immediately to a hospital, pursuant to the decision of the examining physician. At that juncture, plaintiff's decedent had totally lost the use of both of his legs, and was practically unconscious when taken ashore to Tony Facio Hospital. He died the following morning.

C. The Suit in Panama.

Following Reyes' death, suit was instituted in the Third Labor Court of Panama by Amelia Zamora De Mateos, (plaintiff in this action), Rita Zamora and Margarita Atares they are, respectively, the mother, grandmother, and sister of the decedent. Texpan was the defendant in that action. Under Panamanian law, the beneficiaries of a deceased seaman may recover from the employer if the death was caused by a "professional risk".[4] A "profes-

4. Our citation of Panamanian law is based on information obtained from the deposition testimony of Dr. Roy Durling, a Panamanian lawyer and defendant's proposed expert on the law of Panama. In addition, defendant has submitted, as exhibits, trans-

sional risk" is one to which workmen are exposed by reason of the work they perform for the account of their employer.[5]

On August 16, 1972, the Panamanian Labor Court rendered judgment for plaintiffs. The substance of that ruling was that while the exact cause of Reyes' death was a matter of conjecture, plaintiffs should enjoy the "benefit of the doubt" on this issue. Texpan appealed that decision to the Superior Court of Panama, which affirmed the judgment on February 9, 1973. The appeal was carried to the Supreme Court of Justice of Panama, which reversed the lower court on June 6, 1973; [6] that court held that the exact cause of death was unknown; hence, it ruled that that plaintiffs had not met their burden of establishing that the cause of death stemmed from a "professional risk"; a "professional risk" could not be inferred, the court stated, merely because Reyes became ill while on duty. *Thus, the judgment in favor of Texpan stands as a final judgment in the courts of Panama, rendered, as it was, by the highest court of that sovereign state.*

II. Procedural History of the Case.

Suit was originally instituted in this court by plaintiff against both Texaco, Inc. and Texpan, as owners of the Texaco Kenya, and employers of plaintiff's decedent. Service was effected only against Texaco, Inc., which in its answer, and subsequent motion for summary judgment, vigorously denied that it either owned the Texaco Kenya,

4. (Cont'd.)
lations of the decisions rendered by the Third Labor Court of Panama, the Superior Labor Court of Panama, and the Supreme Court of Justice of Panama. (Defendant's exhibit #1).

5. Panamanian Labor Code, Article 291.

6. The complaint in the action before this United States District Court was filed on February 23, 1972; however, it was not assigned to us until July 2, 1973, subsequent to that decision of the Panamanian Supreme Court of Justice.

or had ever employed plaintiff's decedent.[7] *After many conferences which we held with the parties with a view toward resolution of the hot contest over this issue, on July 9, 1974, the parties entered into a stipulation, pursuant to which it was agreed that Texaco, Inc. would be dismissed as a defendant, and that counsel for defendant would accept service on behalf of Texpan, with the same force and effect as if a vessel of Texpan had been legally attached in the port of Philadelphia. It was understood by the parties that the dismissal of Texaco, Inc. as a defendant would not give rise to any inference, other than the agreement of the parties that no further action would be pursued against Texaco, Inc.*

We have previously noted that plaintiff claims jurisdiction under the admiralty law of the United States, as modified by the Jones Act, and the Death on the High Seas Act. Plaintiff avers that the fatal illness of Theodore Reyes was caused by the unsanitary conditions aboard the Texaco Kenya; specifically, she pinpoints an alleged lack of safeguards to protect crew members who are employed in the work of cleaning the tanks of the vessel; she contends, therefore, that these conditions rendered the vessel unseaworthy, and the defendant negligent; of greater significance, however, is the argument pressed most strenuously by plaintiff that unseaworthiness and negligence are established by the lack of proper medical treatment rendered to plaintiff's decedent, after he was taken ill.

Defendant has not only denied liability with respect to the merits of plaintiff's complaint, but has maintained throughout this tortuous litigation that the predominance of contacts with Panama precludes the application of United States law to this action. *See* Lauritzen v. Larsen, 345 U. S. 571 (1953). Defendant asserts that there is not,

7. Texaco, Inc.'s motion for summary judgment was denied by this court on June 18, 1974.

and cannot be any basis upon which to justify the choice of the law of the United States as controlling in this litigation. Rather, the defendant argues the law of Panama is the proper choice. The bases for those contentions are as follows: (1) the accident (illness), occurred either on the high seas, or in a foreign port; (2) the decedent seaman was a Panamanian national who signed a contract of employment in Panama; (3) the shipowner-defendant is a Panamanian corporation; and (4) suit has already been instituted and resolved in the courts of Panama.

In response to this argument, plaintiff points to Texpan's status as a wholly-owned subsidiary of Texaco, Inc., an American corporation. Relying prinicipally upon the decision of the Supreme Court in Hellenic Lines Ltd. v. Rhoditis, 398 U. S. 306, *rehearing denied* 400 U. S. 856 (1970), plaintiff asserts that Texaco, Inc. should not be permitted to hide behind the cloak of a foreign subsidiary, and thereby escape its obligations under the martime law of this country. The *base of operations* of Texpan, plaintiff avers, is in New York City, and this substantial contact with the United States is sufficient to dictate the application of United States law, and thus confer jurisdiction on this court.

The nature of the contacts with Panama and in particular the nature of the relationship between Texpan and Texaco, Inc., were fully and exhaustively developed during discovery. We note that the decision of the Supreme Court of Justice of Panama was pronounced on June 6, 1973, subsequent to the filing of the complaint in this action. Based upon that decision, defendant argues that the issues before us have already been judicially resolved, and that the doctrine of comity dictates our recognition of the foreign judgment, with the concomitant result that this action be dismissed.

In light of the full development during discovery of the issues relative to: (1) the recognition to be accorded the Panamanian judgment, and (2) the proper choice of controlling law, we invited the parties to submit the matter as a case stated for determination of the issue of jurisdiction; it is now before us on that basis.

Thus, we direct our attention to consideration of the choice of law, the controlling and dispositive issue; one which may be decided on the record before us.

III. Choice of Controlling Law.

A. Lauritzen v. Larsen—the first six factors.

A decision with respect to the matter of choice of law requires an analysis of Lauritzen v. Larsen, 345 U. S. 571 (1953). In that case, the Supreme Court enumerated seven factors to be considered in determining which nation's law should be applied in a maritime tort claim.

In examining the seven factors mandated by the *Lauritzen* decision, we will defer consideration of the fourth factor, the allegiance of the shipowner, until last, since that point is the primary one upon which plaintiff relies in contending that United States law should be applied. The remaining six factors are as follows:

(1) *Place of the Wrongful Act*—this factor is given little weight by the Court; in the instant case, it is of no significance, since the injury occurred either on the high seas, or in a port of Honduras or Costa Rica, and thus cannot assist us in determining whether Panamanian or United States law should be applied.

(2) *Law of the Flag*—"Perhaps the most venerable and universal rule of maritime law relevant to our problem is that which gives cardinal importance to the law of the flag." *Lauritzen, supra* at 584. In the instant case, the Texaco Kenya flew the flag of Liberia, and thus that

country's law should be applied, "unless some heavy counterweight appears." Lauritzen, *supra* at 586. *See also* Hellenic Lines Ltd. v. Rhoditis, 398 U. S. 306, 308 (1970).

In this case, the "heavy counterweight" appears in the form of a "flag of convenience." The *Lauritzen* court clearly stated that vessel registration of this nature was not entitled to the same conclusive effect as that of a "legitimate" flag state. *Lauritzen, supra,* at 587. In Kontos v. S. S. Sophie C., 236 F. Supp. 664, 670 (E. D. Pa. 1964), Judge Luongo, of this Court, confronted with a situation similar to that before us, stated:

> The vessel here is of Liberian registry and flies the Liberian flag. That is the sum and substance of its contact with Liberia. The flag is one of convenience. . . . Applying the factors reviewed in Lauritzen, the law of the flag, in this case a flag of convenience, must give way to the "heavy counterweight" of the preponderating contacts with Greek law.

See also Bartholomew v. Universe Tankships, Inc., 263 F. 2d 437, (2d Cir.) *cert. denied* 359 U. S. 1000 (1959); Southern Cross Steamship Co. v. Firipis, 285 F. 2d 651 (4th Cir. 1960).

As in *Kontos, supra,* the significance of Liberian registry is outweighed by the predominant contacts with another country; in this case, the Republic of Panama. We therefore conclude that the law of Liberia should not be applied in this case.

(3) *Allegiance or domicile of the injured—in the context of the matter before us, this factor weighs heavily in favor of the application of Panamanian law, for not only was Theodore Reyes a domiciliary of Panama, but it is extremely significant that an action was brought in the courts of Panama by his representatives, one of whom is*

the plaintiff in this action. Plaintiff administratrix, who is also a citizen and resident of Panama, therefore has been afforded the complete rights under Panamanian judicial process. As stated in Lauritzen, "each nation has a legitimate interest that its nationals and permanent inhabitants be not maimed or disabled from self-support." 345 U. S. at 586. (emphasis supplied). *The Republic of Panama has served this interest by opening its courts to the plaintiff.*

(4) *Place of contract*—this factor is given very little weight in *Lauritzen*, in that the place of contract of a seaman is often fortuitous. Again, however, this factor will be given more than passing consideration, because *Theodore Reyes agreed to Panamanian "Conditions of Employment", which, inter alia, guaranteed a forum in Panama for any dispute arising out of employment, including personal injury. We reemphasize that plaintiff has had the benefit of that forum, and of the fruits of that contract.*

(5) *Inaccessibility of foreign forum*—it is manifest that this factor provides no basis for the application of the law of the United States. *Plaintiff, as a domiciliary of Panama, who has already sued in that country on this claim, clearly has had full access to the foreign forum.* This is not a case in which plaintiff will be without a remedy, if Jones Act jurisdiction is denied.

(6) *Law of the forum*—this factor is of very little significance. *Lauritzen* establishes that the law of the forum does not become a factor in the choice of law process simply because jurisdiction has been obtained. 345 U. S. at 590-92; *see also* Pandazopoulos v. Universal Cruise Line, Inc., 365 F. Supp. 208 (S. D. N. Y. 1973).

B. Lauritzen v. Larsen—the seventh factor.

(7) *Allegiance of the defendant shipowner.* These preceding six considerations evidence absolutely no con-

tacts with the United States which are, or could be sufficient to justify the application of the maritime law of this country; the Panamanian element in this case appears overwhelming.

Plaintiff, however, contends that the significance of the American contact with respect to the final factor to be considered under *Lauritzen*—that of the allegiance of the shipowner—mandates the choice of the law of the United States as controlling in this dispute. Plaintiff notes that the *Lauritzen* concept of shipowner's allegiance was expanded by the Supreme Court in Hellenic Lines Ltd. v. Rhoditis, 398 U. S. 306 (1970), and argues that *Rhoditis* mandates that the shipowner's *base of operations* be given close scrutiny by the court in connection with a decision as to the choice of law question. On this theory, she avers that Texpan's base of operations is not in Panama, as claimed by defendant; rather, it is in New York City, the principal place of business of the corporate parent. Plaintiff claims that when the "facade" of foreign incorporation is pierced to reach Texaco, Inc., this resulting substantial contact with the United States requires us to apply the laws of this country. Resolution of this issue requires us in the first instance, to analyze closely the facts and rationale of *Rhoditis*.

In Hellenic Lines Ltd. v. Rhoditis, *supra*, a Greek seaman brought suit under the Jones Act for injuries received aboard ship in the port of New Orleans; the seaman, Rhoditis, was a citizen of Greece, and had registered and enlisted as a seaman in that country; the contract of employment provided that disputes arising out of employment were to be adjudicated under Greek law in that country's courts.

The defendant shipowner was a Greek corporation, but its largest office was in New York City; moreover, more than 95% of the company's stock was owned by a Greek

citizen who had been an American domiciliary for over twenty years, and who managed the company's affairs from his command post in New York. Based upon these facts, the Court held that the district court had properly applied the Jones Act to that matter, rather than the law of Greece.

The Court emphasized that the *Lauritzen* test is not to be applied by a mechanical counting of contacts; "*[t]he significance of one or more factors must be considered in light of the national interest served by the assertion of Jones Act jurisdiction.*" 398 U. S. at 309. (emphasis supplied). The Court further stated that the list of factors in *Lauritzen* was not meant to be "exhaustive", and that the shipowner's *base of operations* was, specifically, another point to be considered.[8] In *Rhoditis*, the Court concluded that this base of operations, despite the facade of foreign incorporation, was clearly in the United States:

> We see no reason whatsoever to give the Jones Act a strained construction so that this alien owner, engaged in an extensive business operation in this country, may have an advantage over citizens engaged in the same business by allowing him to escape the obligations and responsibility of a Jones Act "employer". The flag, the nationality of the seaman, the fact that his employment contract was Greek, and that he might be compensated there are in the totality of the circumstances of this case minor weights in the scales compared with the substantial and continuing contacts

8. While *Rhoditis* set forth that the base of operations was a factor to be considered in addition to those listed in *Lauritzen*, it bears sufficient relationship to the factor of shipowner's allegiance to justify our treatment of it under the latter heading. *See* Pandazopoulos v. Universal Cruise Line, Inc., 365 F. Supp. 208, 214 (S. D. N. Y. 1973); Pavlou v. Ocean Traders Marine Corp., 211 F. Supp. 320, 323 (S. D. N. Y. 1962).

that this alien owner has with this country. Hellenic Lines Ltd. v. Rhoditis, 398 U. S. 306, 310.[9]

Plaintiff in the instant case strenuously asserts that *Rhoditis* must control the resolution of the choice of law problem before us. She points out that *Rhoditis* involved 95% ownership of the foreign corporation by an American domiciliary, whereas the facts before us show 100% ownership of the stock of Texpan by Texaco, Inc. Despite this attempt by Texaco, Inc. to escape its obligations under American law, plaintiff contends, we must find that Texpan's contacts with this country are predominant, and having so found, we must follow the *Rhoditis* holding and apply the law of the United States.

We reject such casuistic reasoning under the facts before us. Plaintiff's contention fails for two reasons. *First*, plaintiff *has already brought suit in Panama;* this crucially distinguishes the case from *Rhoditis.* We do not read *Rhoditis* to hold that once foreign incorporation, albeit American parent ownership, is shown, that, *ipso facto,* Jones Act jurisdiction must be found. *Such an interpretation would, in fact, produce precisely the mechanical application of the Lauritzen standards which was expressly disavowed by the Court in Rhoditis.*[10] We must, in the

9. In *Rhoditis,* the Court cited the decision in Bartholomew v. Universe Tankships, Inc., 263 F. 2d 437 (2nd Cir. 1959), in which Judge Medina stated with respect to the foreign veil:

> Although appellant contends otherwise, the practice in this type of case of looking through the facade of foreign registration and incorporation to the American ownership behind it is now well established. [citations omitted]. This is essential unless the purposes of the Jones Act are to be frustrated by American shipowners intent upon evading their obligations under the law by the simple expedient of incorporating in a foreign country and registering their vessels under a foreign flag. [citation omitted]. In the case now before us appellant has taken the trouble to insert an additional nominal foreign corporation between the flag and the true beneficial ownership of the vessel. But we have little difficulty in brushing all this aside when considering the applicability *vel non* of the Jones Act. Complicating the mechanics of evasive schemes cannot serve to make them more effective. *Id.* at 442.

10. *But cf.* Moncada v. Lemuria Shipping Corp., 491 F. 2d 470 (2d Cir.), *cert. denied,* 417 U. S. 947 (1974). The language in *Moncada* is ambiguous. There, the court determined that the facts before it evidenced substantial contact with the United States, and directed the application of the Jones Act; the court relied principally upon the fact that the stock of the foreign corporation was owned by Americans, but also noted that the vessel was managed and chartered from this country, that all the officers of the foreign corporation were American, and that the vessel traveled frequently in ports of the United States.

In addressing the issue of Jones Act jurisdiction, it is clear that the court in *Moncada* applied the rule that Jones Act jurisdiction should be found if the American contacts are "substantial." Bartholomew v. Universe Tankships, Inc., 263 F. 2d 437 (2d Cir. 1959). It is not clear, however, on what basis this determination of substantiality was made. The court first noted the *Lauritizen* factors, and then, relying on the holding in *Bartholomew, supra,* stated:

> But . . . our task is not to weigh or balance present against absent contacts, *but merely to determine whether the contacts which are present are substantial.* 491 F. 2d at 472. (emphasis supplied).

This language suggests that the court was determining the issue of substantiality in a vacuum; the factors which suggest foreign contacts are to be entirely ignored; the focus must be *only* upon those factors which evidence contacts with this country; if these factors are "substantial", the Jones Act must be applied. Applying this test to the case at bar, the fact that the parties have already adjudicated this dispute in the courts of Panama would become irrelevant; our examination would be restricted to the question of whether the ownership of Texpan by Texaco, Inc., evidences a "substantial" contact with the United States.

The court in *Moncada,* however, did not hold fast to this position; two sentences after the above-quoted passage, the court stated:

> Moreover, many of the factors *here favoring defendants* have been declared insignificant in *Lauritizen* and succeeding cases. *Id.* (emphasis supplied).

It is apparent that in *noting the insignificance of the foreign contacts, the court did not restrict itself to an examination of the domestic contacts.* Thus, we do not believe that the *Moncada* decision stands for the proposition that we should totally ignore the contacts which suggest the application of another country's laws.

"totality of the circumstances", consider the proper weight to be given to *each of the Lauritzen factors.* As we have already stated, the factors of domicile of the injured seaman, place of contract, and inaccessibility of foreign forum must be given more than ordinary significance in the present case; they are not "minor weights"; rather they provide the affirmative basis for application of the law of Panama.[11] *Thus, even in the face of domestic ownership of an allegedly "sham" foreign corporation, a proper consideration of all relevant factors in context dictates that the law of Panama be applied.*

The second basis for rejection of plaintiff's argument is the utter failure to demonstrate that Texpan's incorporation in Panama is a "facade" to enable Texaco, Inc. to avoid its obligations under the maritime law of the United States. It is, of course, an accepted fact that American shipowners frequently seek to avoid the stringent shipping laws of this country through the mechanism of incorporation in countries with less restrictive regulations. Lauritzen

10. (Cont'd.)

Rather, as directed by the Supreme Court in Hellenic Lines Ltd. v. Rhoditis, *supra, we must examine all relevant factors, in the "totality of the circumstances", in order to determine whether the United States contacts are substantial and thus justify the application of the Jones Act.* If *Moncada* stands for a contrary proposition, we decline to follow it, and find no other case in this circuit, or elsewhere, which has adopted such a restricted basis for decision.

11. In responding to Texpan's argument that the doctrine of comity dictates dismissal of this action, plaintiff cites Gillespie v. United States Steel Corp., 379 U. S. 148 (1964), for the proposition that the action in Panama was of no force and effect, because the Jones Act provides the "exclusive remedy" for the death of a seaman in the course of employment. *Gillespie,* however, held only that the Jones Act precluded the application of state wrongful death provisions; the applicability of foreign law in light of potential Jones Act jurisdiction was not an issue before the Court. *Thus, Gillespie is not relevant to the question of the degree to which we should consider the Panamanian judgment in applying the standards of Lauritzen v. Larsen, supra.*

v. Larsen, 345 U. S. at 587. For example, in Pavlou v. Ocean Traders Marine Corp., 211 F. Supp. 320 (S. D. N. Y. 1962), the shipowner corporation, while organized under the laws of Liberia, maintained *no office* in that country; based upon that fact, the court pierced the corporate veil; since there was a United States base of operations, it concluded there was jurisdiction under the Jones Act. *See also* Pandazopoulos v. Universal Cruise Line, Inc., 365 F. Supp. 208 (S. D. N. Y. 1973); Bobolakis v. Compania Panamena Maritima San Gerassimo, 168 F. Supp. 236 (S. D. N. Y. 1958).

Piercing a corporate veil cannot be equated to the exotics of Salome's dance; we cannot cast veils aside at will. *Simply because an American corporation owns the stock of a foreign corporation, it does not follow inexorably, or, indeed, even arguably, that the foreign corporation is a "facade" formed to enable the domestic corporation to escape its obligations under the laws of the United States. The record in the instant case, one based on a case stated, demonstrates that Texpan is a Panamanian corporation which maintains offices in Panama City; it pays taxes to the Republic of Panama; it is engaged not only in the business of international shipping, but also in the business of sales and distribution of petroleum products throughout the Republic of Panama; Texpan maintains an active bank account in Panama which is used in the usual and ordinary course of business of that company; while the President of Texpan is a United States citizen, none of the members of the Board of Directors of Texpan is a director of Texaco, Inc.; moreover, the day-to-day administration of affairs is managed from Texpan's office in Panama City.*

In support of its allegation that Texpan is a mere facade, plaintiff stresses the deposition testimony of the President of Texpan, Robert Chandler, which evidences a

less-than-thorough knowledge of the shipping operations of Texpan, specifically with respect to the ownership, registration, and manning of Texpan vessels.[12] We do not believe, however, that Mr. Chandler's inability to answer specific questions regarding the registration of particular Texpan vessels forms a sufficient basis upon which to pierce the corporate veil of Texpan, when balanced against the significant and continuing business operations and contacts maintained by Texpan as a separate and independent corporate entity, despite its ownership by Texaco, Inc.;[13] thus, we find that the defendant's base of operations is in Panama and that it is a separate viable entity. With this determination, all potential contact with the United States in this litigation vanishes, and no basis exists upon which to justify the application of the laws of the United States. The law of Panama must and does control in this case.

IV. Forum Non Conveniens

Despite our determination that the law of Panama should be applied in this action, and our recognition that a "final" judgment has been rendered in the courts of that country, we do not have in the record before us proof of the law of Panama with respect to the doctrine of *res judicata;* therefore, although this action arises out of the same incident which was the basis of the suit in Panama,

12. Plaintiff, perhaps somewhat prone to hyperbole, states that "[n]ever in the history of deposition-taking was there ever such a total lack of knowledge about the operations in their own corporation by a president and marine superintendent as in this case." Plaintiff's Reply Brief, at 1.

13. While Mr. Chandler was not fully cognizant of the specific shipping affairs of Texpan, he explained that his duties were primarily directed toward the petroleum distribution aspects of the business; he stated further that principal responsibility for the manning of the Texpan vessels is under the control of Mr. Munoz, the marine supervisor of Texpan. Mr. Munoz is a Panamanian national. (Chandler deposition at 3-9, 19-20).

namely, the death of Theodore Reyes, we will not dismiss this action under the doctrine of *res judicata;* the parties have not supplied us with the information necessary to make such a determination. Fed. R. Civ. P. 44.1.[14]

However, we will dismiss the action under the doctrine of *forum non conveniens.* This precept "presupposes at least two forums in which the defendant is amenable to process." Gulf Oil Corp. v. Gilbert, 330 U. S. 501, 507 (1947). The standards to be applied in determining the applicability of the doctrine were summarized by the Court in *Gulf Oil, supra:*

> Important considerations are the relative ease of access to sources of proof; availability of compulsory process for attendance of unwilling, and the cost of obtaining willing, witnesses; . . . and all other practical problems that make trial of a case easy, expeditious and inexpensive. . . . The court will weigh relative advantages and obstacles to fair trial. . . . But unless the balance is strongly in favor of the defendant, the plaintiff's choice of forum should rarely be disturbed. *Id.* at 508.

Under this principle, courts sitting in admiralty have often refused to entertain actions between aliens in cases in which foreign law govern the issues. *See generally* Canada Malting Co. v. Paterson Steamships, 285 U. S. 413 (1932); *see also* Fitzgerald v. Texaco, Inc., 521 F. 2d 448 (2d Cir. 1975), *cert. denied,* 96 S. Ct. 781 (1976). *The facts before us in the instant action present the precise situation which dictates the application of that doctrine; plaintiff and defendant are both citizens of the Republic*

14. While we recognize that Rule 44.1 permits the court independently to research a question of foreign law, we think any resolution of this matter according to a Panamanian doctrine of *res judicata* is best relegated to the courts of that nation.

of Panama; the law of Panama controls; the witnesses are located in Panama; the courts of Panama have already resolved the instant dispute under Panamanian law; if any further action is to be permitted under the laws of Panama, that country can best determine that issue. Hence, since plaintiff's choice of forum is overwhelmingly counterbalanced by the contacts with the Republic of Panama, we decline to exercise jurisdiction, and accordingly, will dismiss the action on the basis of forum non conveniens.

V. Conclusion.

Therefore, we conclude that the law of Panama controls in all respects in this litigation, and that this forum is inappropriate for further resolution of the issues, if any, which are still viable. Thus, we dismiss the action with prejudice. An appropriate Order will issue.

ORDER.

And now, to wit, this 3rd day of August, 1976, upon consideration of the briefs, affidavits, exhibits, and other documents submitted by the parties in the above-captioned matter, the Court having considered these materials in the context of a case stated for determination of the issue of jurisdiction for the reasons expressed in the accompany Opinion, it is

Ordered, Adjudged, and Decreed that this action be, and the same hereby is, Dismissed with prejudice.

By THE COURT:

/s/ Herbert A. Fogel,
Herbert A. Fogel, *J.*
United States District Court

STATUTES INVOLVED.

Death on High Seas Act, 46 U. S. C. 761.

Whenever the death of a person shall be caused by wrongful act, neglect, or default occurring on the high seas beyond a marine league from the shore of any State or the District of Columbia, or the Territories or dependencies of the United States, the personal representative of the decedent may maintain a suit for damages in the district courts of the United States, in admiralty, for the exclusive benefit of the decedent's wife, husband, parent, child, or dependent relative against the vessel, person, or corporation which would have been liable if death had not ensued.

Jones Act, 46 U. S. C. 688.

Any seaman who shall suffer personal injury in the course of his employment may, at his election, maintain an action for damages at law with the right of trial by jury, and in such action all statutes of the United States modifying or extending the common-law right or remedy in cases of personal injury to railway employees shall apply; and in case of the death of any seaman as a result of any such personal injury the personal representative of such seaman may maintain an action for damages at law with the right of trial by jury, and in such action, all statutes of the United States conferring or regulating the right of action for death in the case of railway employees shall be applicable. Jurisdiction in such actions shall be under the court of the district in which the defendant employer resides or in which his prinicpal office is located.